

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

LONG SERVICES CORPORATION )  
and RAGNER PETERSON dba )  
SUNRISE EAST APARTMENTS, )

Appellants, )

v. )

PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )

Respondent. )

PCHB NO. 92-231

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

This matter was heard on June 30, 1993, before the Pollution Control Hearings Board ("Board"), in Lacey, Washington. Robert V. Jensen, attorney member, presided. Harold S. Zimmerman, chairman; and Richard C. Kelley, member completed the administrative tribunal.

Appellants, Long Services Corporation ("Long"); and Ragner Peterson, dba Sunrise East Apartments, were represented by Mike Cassidy, President of Long. The Puget Sound Air Pollution Control Agency ("PSAPCA"), was represented by attorney, Keith D. McGoffin. Court reporter, Louise M. Becker, affiliated with Gene S. Barker and Associates of Olympia, recorded the proceedings.

The Board heard the testimony of sworn witnesses, reviewed the exhibits and listened to closing arguments of the parties. Based thereon, the Board makes these:

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-231

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FINDINGS OF FACT

I

On July 29, 1992, Long filed a Notice of Intent to Remove or Encapsulate Asbestos with PSAPCA. The notice listed the project as emergency removal of asbestos from an apartment building, located at 2601 West Manor Place, Seattle, Washington. Long stated that the date for the project would be from July 30 through August 14, 1992. On the following day, Long filed an amended notice, limiting somewhat the scope of the project.

II

Richard Gribbon, an inspector for PSAPCA, was accompanied by Harriett Bryant, another PSAPCA inspector, on August 5, 1992, to the parking lot of Sunrise East Apartments, the building in which the Long asbestos-removal project was taking place.

III

At about 1:00 p.m., Mr. Gribbon observed Edwin Stratford, the project supervisor, carry a clear bag marked "Asbestos" across the apartment building parking lot. Mr. Stratford entered a large dumpster through its open double doors, on the north side of the dumpster, deposited the bag, and exited the dumpster to return to the apartment building.

IV

The PSAPCA inspectors then parked their car in the elevated parking area south of the dumpster. Mr. Gribbon, at about 1:08 p.m., observed an elderly woman walk into the dumpster. He could

1 see her head through the opened dumpster lid. She left the  
2 dumpster after a brief time and walked on to the south.  
3

4 V

5 The PSAPCA inspectors, at approximately 1:13 p.m., contacted  
6 Mr. Stratford, after he had closed the dumpster. They advised  
7 Mr. Stratford that the dumpster had been left open and unattended  
8 for 13 minutes. Mr. Stratford, at the request of Mr. Gribbon,  
9 opened the unlocked dumpster. Mr. Gribbon saw several double-  
10 bagged, clear, labeled, asbestos bags containing asbestos debris.  
11 He noted that two of the bags had tears. One had a tear only on  
12 the exterior bag; the other, on both bags. Mr. Stratford stated  
13 that he would re-bag the debris. The bags were 6-mil thick.

14 VI

15 Mr. Gribbon informed Mr. Stratford that PSAPCA regulations  
16 require any asbestos-containing material to be kept in a  
17 controlled area, and stored in leak-proof containers after  
18 collection. Mr. Gribbon further advised Mr. Stratford that  
19 PSAPCA would issue Notices of Violation.

20 VII

21 PSAPCA issued Notices of Violation to the appellants, dated:  
22 September 9, 1992. On December 9, 1992, PSAPCA, issued to the  
23 appellants a Notice and Order of Civil Penalty, in the amount of  
24 \$2000.00, for alleged violation of the PSAPCA regulations  
25 requiring containment in a controlled area, and sealing all

1 asbestos-containing waste materials in leak-tight containers  
2 after wetting.

3  
4 VIII

5 Subsequently, Long has demarcated the dumpsters it is using  
6 to load asbestos waste. Since 1979, Long, which does  
7 approximately 400 asbestos projects a year, has had two or three  
8 substantive violations of PSAPCA regulations.

9 IX

10 PSAPCA presented no evidence at the hearing, to implicate  
11 the appellants, other than Long.

12 X

13 Any Conclusion of Law deemed to be a Finding of Fact is  
14 hereby adopted as such. From these Findings of Fact, the Board  
15 issues these:

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over these issues and the  
19 parties, under RCW 43.21B.310(1) and chapter 70.94 RCW.

20 II

21 PSAPCA has the initial burden of proof in this appeal of a  
22 civil penalty. WAC 371-08-183(3).

23 III

24 The Board takes official notice of PSAPCA's regulations,  
25 which are on file with the Environmental Hearings Office.

26 FINAL FINDINGS OF FACT  
27 CONCLUSIONS OF LAW AND ORDER  
PCHB NO. 92-231

1  
2 IV

3 Regulation III, 4.04(a)(4)(C) makes it

4 unlawful for any person to cause or allow work on an  
5 asbestos project unless the following procedures are  
6 employed:

7 (4) All asbestos-containing material that have been removed  
8 or may have fallen off components during the course of an  
9 asbestos project shall be:

10 (C) Contained in a controlled area at all times until  
11 transported to a waste disposal site;

12 V

13 A controlled area is defined at 4.02(j) as:

14 an area which only certified asbestos workers, or other  
15 persons authorized by Regulation I of the Washington  
16 Industrial Safety and Health Act, have access. For  
17 residential dwellings, the controlled area is the interior  
18 of the dwelling.

19 VI

20 Long violated this containment regulation, by allowing the  
21 dumpster to be unattended and accessible to the public, albeit  
22 for a short period of time.

23 VII

24 Regulation III, 4.05(a)(1)(B), makes it

25 unlawful for any person to cause or allow work on an  
26 asbestos project unless the following procedures are  
27 employed during the collection, processing, packaging,  
28 transporting, or deposition of any asbestos-containing  
29 material:

30 (1) Treat all asbestos-containing waste materials as  
31 follows:

32 (B) After wetting, seal all asbestos-containing waste  
33 materials in leak-tight containers to ensure that they  
34 remain adequately wet when deposited at a waste  
35 disposal site;

VIII

A "leak-tight container" is defined at 4.02(q) as:

a dust-tight container, at least 6-mil thick, that encloses the asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and polyethylene plastic.

IX

Long violated the leak-tight requirement, only on one bag. The double-bagging resulted in the situation that the container with a tear only on the outer bag, conforms to PSAPCA's regulations.

X

PSAPCA has failed to meet its burden of proof to establish any violation of the above regulations by Ragner Peterson dba Sunrise East Apartments.

XI

The Board generally considers three factors in reviewing the reasonableness of a civil penalty. These are: 1) the nature of the violation, 2) the prior behavior of the violator, and 3) actions taken after the violation to solve the problems.

XII

The available penalty is \$10,000.00 per violation. PSAPCA properly chose the lower end of the allowable penalty, due to the fact that the violation was isolated, though careless.

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XIII

We believe, however that the prior history of Long indicates, that although engaged in a risky business, its substantive violations have been very few, compared to its volume of work.

XIV

Equally important, Long has manifested an attitude that shows a sincere desire to comply with all regulations. This is reflected in its decision, subsequent to these violations, to demarcate its dumpsters, into which it is loading asbestos. The Board would urge Long also to sign the dumpsters with adequate warnings, clearly understandable to the public, to stay clear of the dumpsters, while they are involved in asbestos projects.

XV

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From the foregoing, the Board issues this:


ORDER

1. \$1000.00 of the civil penalty issued to Long, is suspended, provided that Long receives no further air pollution violations for three years.

2. The civil penalty issued by PSAPCA against Ragner Peterson dba Sunrise East Apartments, is reversed.

DONE this 30<sup>th</sup> day of July, 1993.

POLLUTION CONTROL HEARINGS BOARD

  
ROBERT V. JENSEN, Presiding Officer

  
HAROLD S. ZIMMERMAN, Chairman

  
RICHARD C. KELLEY, Member